



THE CITY OF NEW YORK
LAW DEPARTMENT
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June 16, 2021

BY ECF

Honorable Debra C. Freeman
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

As separately ordered, this Court will hold a telephonic initial pretrial conference in this case on 7/6/2021 at 10:00 a.m. Defendant Moise's time to move, answer, or otherwise respond to the Complaint is extended to the date of the conference, and will be addressed further at that time. The Clerk of Court is directed to mail a copy of this Order to Plaintiff at the address shown on the Docket.

SO ORDERED


DEBRA FREEMAN
United States Magistrate Judge

Dated: 6/16/2021

Re: Gabino Genao v. City of New York, et al., 21-CV-00303 (AT) (DCF)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department, assigned to the defense of the above-referenced matter on behalf of Defendant City of New York.¹ On behalf of Defendant City, I write to respectfully request that the Court, *sua sponte*, stay Captain Moise's answer due date, and any discovery related to Captain Moise, until he returns from his indefinite medical leave. This is the first such request. As plaintiff is incarcerated, we were unable to obtain his position before filing this request.

By way of background, *pro se* Plaintiff alleges, *inter alia*, that on or about December 15, 2020, Rikers officers sprayed him with a fire extinguisher, subjecting him to excessive force. See Docket Entry No. 2. On March 12, 2021, the Department of Corrections waived service for Captain Moise, and his answer is currently due June 18, 2021. See Docket Entry Nos. 19, 28.

While trying to set up an interview to resolve representation with Captain Moise, the undersigned learned that he has taken an indefinite medical leave of absence, with no set return date to work. As such, this Office respectfully requests that the Court, *sua sponte*, stay Captain

¹ This case has been assigned to Assistant Corporation Counsel Caroline McGuire, who is presently awaiting admission to the Bar and is handling this matter under supervision. Ms. McGuire may be reached directly at 929-486-3869, or by email at cmcguire@law.nyc.gov.

Moise's answer date until he returns to work. This Office has not been able to resolve representation with Captain Moise as he is on leave. Accordingly, this request for an extension of time is not made on his behalf. However, given the time involved in determining the representation of a correction officer, and in the interest of judicial economy, we would hope that the court may, *sua sponte*, stay the time to answer on behalf of Captain Moise.

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Louis Vuitton Malletier S.A. v. LY USA, Inc., 676 F.3d 83, 97 (2d Cir. 2012) (quoting Landis v. N. Am. Co., 299 U.S. 248, 254 (1936)). "The person seeking a stay 'bears the burden of establishing its need.'" Id. (quoting Clinton v. Jones, 520 U.S. 681, 708 (1997)). "[A]bsent a showing of undue prejudice upon defendant or interference with his constitutional rights, there is no reason why plaintiff should be delayed in its efforts to diligently proceed to sustain its claim." Hicks v. City of New York, 268 F. Supp. 2d 238, 241 (E.D.N.Y. 2003) (internal quotation marks omitted).

As Captain Moise's alleged involvement in the incident at issue is minimal, this stay should not impact any other deadlines, and Defendant anticipates that the parties can proceed with discovery regarding all other defendant officers.

Accordingly, I write to respectfully request that the Court, *sua sponte*, stay Captain Moise's answer due date, and all discovery related to Captain Moise, until he returns from his indefinite medical leave. Should the Court grant the requested stay, at the direction of the Court, the undersigned will file periodic status letters regarding the progress of the Moise's return to work.

Thank you for your consideration herein.

Respectfully submitted,

/s/

Erin Ryan
Assistant Corporation Counsel
Special Federal Litigation Division

cc: Gabino Genao (By First Class Mail)
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